

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

RECEIVED

In Re:

JUL 24 2003

R.S.A. 485-A:17 Site Specific Permit WPS-6515

03-09 WC

NOTICE OF APPEAL

NOW COMES the Town of Chester Conservation Commission by and through its attorneys, Wadleigh, Starr & Peters, PLLC and pursuant to R.S.A. 485-A:19 and Env-WC203.03 respectfully files this Notice of Appeal, and in support thereof says as follows:

I. The legal name of each person seeking relief and the persons address:

Chester Conservation Commission, Municipal Office Building, 84 Chester Street, P.O. Box 275, Chester, NH 03036.

II. A copy of the decision or order which is appealed:

The Chester Conservation Commission is appealing the R.S.A. 485-A:17 Site Specific Permit WPS-6515 granted to Bryan Remillard, 164 North Pond Road, Chester, NH 03036 with regard to the proposed Rosewood Lane subdivision, Chester, NH. A copy is attached as Exhibit A.

III. A concise and explicit statement of the facts upon which the Counsel is expected to rely in granting relief:

The Town of Chester Conservation Commission is a duly organized body of the Town of Chester. Pursuant to R.S.A. 36-A:2, the Commission exists for the purpose, among others of insuring "the proper utilization and protection of the natural resources and for the protection of

water shed resources of “the Town of Chester.” See R.S.A. 36-A:1. The Conservation Commission hereby specifies as good reason for this Notice of Appeal the following:

1. The permit lacks reasonable conditions necessary to satisfy the provisions of R.S.A. 485-A:1, et seq. Paragraph 1 of the permit states: “Water quality degradation shall not occur as a result of the project.” The permit is bereft of any guidelines, recommendations or terms and conditions necessary to achieve this generic statement of purpose. NH R.S.A. 485-A:17 states that “The Department shall have full authority to establish the terms and conditions under which any permit issued may be exercised, giving due consideration to the circumstances involved and the purposes of this chapter [485-A]...” The balance of the permit sets forth no such terms and conditions. As a result, the permit is unreasonable as a matter of fact since it sets forth no terms and conditions whereby the intent of the chapter may be met. The permit is also unlawful in that it fails to exercise the legislature's intent with regard to water quality preservation in that it lacks the requisite detail required by R.S.A. 485-A.

2. The Department has failed to adequately address the concerns raised in the Chester Conservation Commission's Request for Reconsideration of the wetlands permit which was issued for this same project. Many of those same concerns are implicated by this site specific permit.

3. The pond and wetland impacted by this site specific permit is one of the most valuable water bodies and wetland areas within the entire Town of Chester.

4. The Department has a duty to respond to the concerns of a local municipality and its Conservation Commission. Despite assurances that it would do such, the Department failed to arrange for a meeting among the parties to review the details of the permit prior to its issuance of the site specific permit.

5. The plan submitted to DES is specifically inadequate in that it fails to protect this prime wetlands site from degradation. There are no provisions for capturing or treating any runoff from the roadway over this causeway. Failure to provide for any treatment plan creates a continuous situation of non-point source pollution which will drain into a pond which, by its very nature, is not self-flushing.

- a. The plan submitted to DES contains slopes which are inadequate for treatment of runoff;
- b. The causeway footprint calls for insufficient space for runoff treatment;
- c. The causeway design does not accommodate the need for a closed drainage system;
- d. The design of the causeway does not treat runoff in accord with the DES rules and guidelines;
- e. A redesigned causeway which raised the roadway and curb to bring runoff to a retention pond and/or treatment swales would more closely approximate the goals set forth in R.S.A. 485-A:1, et seq.;
- f. The applicant's calculations of a ten year storm event indicate significant runoff which the applicant has filed to address through design;
- g. New Hampshire has set no percentage treatment minimum. Best practices require that 80% of the runoff for the causeway be treated. The council is respectfully requested to require that the current Site Specific Permit be withdrawn and that the applicant be ordered to address these considerations in a redesign of the proposed causeway.

IV. A clear and concise statement of the relief sought and the statutory provision under which the relief is sought:

NH R.S.A. 485-A:17 requires that the Department of Environmental Services establish terms and conditions under which an R.S.A. 485-A:17 permit issued may be exercised "giving due consideration to the circumstances involved and the purposes of this chapter [485-A]...". It is neither reasonable nor lawful for the permit issued by the Department to set absolutely no terms or conditions whereby the intent of the chapter may be met. The Site Specific Permit issued by the Department fails to require a plan for capturing and treating runoff from the causeway which is part of the Site Specific Permit application. The Conservation Commission requests an order from the Counsel reversing the Site Specific Permit WPS-6515 and requiring that the applicant submit supplemental information to the Department for consideration including a plan for capturing and treating runoff from the causeway which will be sufficient to preserve the water quality of the North Pond area.

Respectfully submitted,

CHESTER CONSERVATION
COMMISSION

By its attorneys,
Wadleigh, Starr & Peters, PLLC

Date: July 24, 2003

By:

COPY

Dean B. Eggert
95 Market Street
Manchester, NH 03101
609/669-4140

CERTIFICATION

I hereby certify that I have mailed a copy of the foregoing on July 24, 2003 to Bryan Remillard, 164 North Pond Road, Chester, NH 03036, Cornerstone Survey Associates, Inc., 25 Whitetail Lane, Chester, NH 03036, Henry P. Stewart, P.E., Director and Michael P. Nolin, Commissioner.

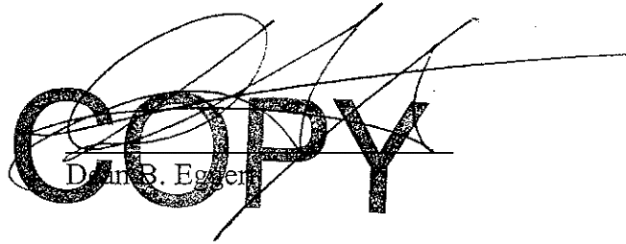

Dean B. Eggen

EXHIBIT A



DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2982



June 25, 2003

Bryan Remillard
164 North Pond Road
Chester, New Hampshire 03036

Re: Rosewood Lane
Chester, New Hampshire

Permit: WPS-6515

Dear Applicant:

Based upon the plans and application approved June 25, 2003, we are hereby issuing RSA 485-A:17 Site Specific Permit WPS-6515. The permit is subject to the following conditions:

1. Water quality degradation shall not occur as a result of the project.
2. Revised plans shall be submitted for permit amendment prior to any changes in construction details or sequences. The Department must be notified in writing within ten days of a change in ownership.
3. The Department must be notified in writing prior to the start of construction.
4. The approved plans and supporting documentation in the permit file are a part of this approval.
5. This permit expires on June 25, 2005.
6. Other permits from the local municipality, the State of New Hampshire and the Federal Government (US EPA and the US Army Corps of Engineers) may be required for this project. Projects disturbing over 1 acre require a Federal stormwater permit from EPA. Information regarding this permitting process can be obtained through the following e-mail address: www.des.state.nh.us/StormWater/construction.htm
7. No activity shall occur in wetland areas until a Wetlands Permit is obtained from the Department. Issuance of this permit does not obligate the Department to approve a wetlands permit for this project.

Sincerely
COPY

Andrew O'Sullivan
Land Resources Management Program

cc: Chester Planning Board
Cornerstone Survey Associates, Inc., 25 Whitetail Lane, Chester, NH 03036

<http://www.state.nh.us>

TDD Access: Relay NH 1-800-735-2964
TOTAL P. 01

*Rec'd
6/25/03
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